

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 30 1998

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Tariffs Implementing Access)
Charge Reform)

CC Docket No. 97-250
File No. CCB/CPD 98-12

AT&T REPLY COMMENTS ON MCI EMERGENCY PETITION FOR PRESCRIPTION

Pursuant to the Commission's Public Notice, DA 98-385, released February 26, 1998, AT&T Corp. ("AT&T") submits these reply comments on MCI's Emergency Petition for Prescription ("MCI Petition"). The comments confirm that MCI has identified a number of issues that require immediate action by the Commission in order to prevent substantial harm to consumers. As shown below, (i) the procedural objections to MCI's Petition are baseless; (ii) the Commission should immediately prescribe cost-based access charges; (iii) the Commission should revisit, and possibly eliminate, the distinction between primary and non-primary lines; (iv) the Commission should act to ensure adequate information supporting PICC charges; (v) the Commission should forbid the LECs to levy the PICC on IXCs that have terminated a business relationship with a customer; and (vi) the Commission should require the LECs to itemize their flowed-through USF assessments in a separate rate element.

1. At the outset, the claims of several LECs that MCI's Petition is procedurally out of bounds is incorrect for several reasons.¹ First, MCI's Petition clearly seeks enforcement of the Access Reform Order, which explicitly provides that the Commission will resort to the "prescriptive backstop" to the market-based approach prior to 2001 if circumstances warrant. See Access Reform Order, ¶ 267. The issues raised in MCI's Petition are thus properly considered in this tariff investigation proceeding, in which the Commission unquestionably has prescriptive powers. Alternatively, MCI's Petition could be considered a valid petition for rulemaking because, as U S WEST has conceded elsewhere, "nothing precludes the Commission from commencing a new rulemaking immediately on the heels of a completed rulemaking on the same subject."² However the Commission wishes to proceed, the LECs' procedural objections to MCI's Petition are meritless.

2. The Comments also confirm that the Commission should act immediately to reduce access charges to forward-looking economic cost.³ Recent developments, including the Eighth Circuit's rulings

¹ See RTC at 2-4; USTA at 2; BellSouth at 2-6; U S WEST at 1; GTE at 2; Ameritech at 1-2.

² Comments of U S WEST, filed January 30, 1998, at 4 n.12, in Request for Amendment of the Commission's Rules Regarding Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers, RM 9210. See also GTE at 2 (conceding that MCI could raise these issues in a petition for rulemaking).

³ See WorldCom at 3-5 ("given the damage done to competition by the Eighth Circuit's decisions, the future is NOW and the
(continued...)

in the Iowa Utilities Board case, have undermined the fundamental premises of the Commission's "market-based" approach to access reform. Because market forces will not constrain access charges in the foreseeable future, the Commission should adopt prescriptive measures to reduce access charges as soon as possible.⁴

The LECs' objections to MCI's request are meritless. For example, contrary to the LECs' claim (see, e.g., USTA at 7), the Access Reform Order makes clear that the market-based approach is premised on the availability of unbundled network element combinations at forward-looking economic cost. See, e.g., Access Reform Order, ¶¶ 32, 262, 337. Moreover, it is no longer true, as it was at the time of the Access Reform Order (and as the LECs contend is still the case), that adequate cost studies for prescription are not available. In fact, the state commissions have conducted such studies pursuant to Section 252 and the Commission is near completion of similar cost studies in the universal service proceeding. See AT&T CFA Comments at 22-23.

The LECs' assurances that competition is in fact developing are also belied by the facts. See especially AT&T CFA Comments at

³ (...continued)

Commission should move swiftly to bring ILEC access rates to competitive levels"); TRA at 3-8; RCN at 2-4; Excel at 4-5.

⁴ See AT&T Comments, filed January 30, 1998, at 4-22, and AT&T Reply Comments, filed February 17, 1998, at 3-8, in Request for Amendment of the Commission's Rules Regarding Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers, RM 9210 ("AT&T CFA Comments" and "AT&T CFA Reply Comments").

5-16; AT&T CFA Reply Comments at 7-8. Indeed, the Commission itself has acknowledged that the Eighth Circuit's ruling on combinations of unbundled network elements is "largely responsible for the virtual absence of competition in local telephone markets."⁵ For all these reasons, the Commission should immediately accelerate the Access Reform Order's "prescriptive backstop," either in this proceeding or in the context of CFA's separate petition. See Access Reform Order, ¶ 267.

3. Similarly, there is striking agreement with AT&T among the commenters that the Commission's decision to distinguish between primary and secondary residential lines for purposes of the new PICC charge is inherently difficult to implement and has caused needless confusion for carriers and customers alike.⁶ Indeed, many commenters, including both IXC's and LEC's, join AT&T in urging the Commission to abandon the distinction altogether.⁷

4. Many commenters in addition to AT&T (at 3-4) also echo MCI's concern that LEC's have not provided IXC's with timely,

⁵ Motion to Expedite Consideration of the Petition for Certiorari by the United States and the Federal Communications Commission, at 5, FCC v. Iowa Utilities Board, No. 97-831 (U.S.) (filed December 1997); see also Excel at 5.

⁶ AT&T at 3-4; GTE at 5-7; WorldCom at 11; Cable & Wireless at 6; TRA at 9; Excel at 10; BellSouth at 14; U S WEST at 5; Ameritech at 15-16; Bell Atlantic at 11.

⁷ See, e.g., AT&T at 4; Sprint at 3; BellSouth at 14; GTE at 5; RTC at 5-6; Frontier at 5-6.

verifiable, and accurate line count data to support PICC charges.⁸ Despite the LECs' protestations,⁹ the monthly information that the LECs have recently begun to provide, while useful for certain purposes, is simply not adequate. Because it is provided in a CABS BOS format, IXCs are unable to verify the line charges against their own information; in addition, the LECs' information is insufficient to allow IXCs to confirm the LECs' primary and non-primary line counts (since IXCs have no way of knowing how many working telephone numbers belong to a given customer). For these reasons, AT&T agrees with a number of commenters that the LECs should provide such specific information through the Customer Account Record Exchange ("CARE").¹⁰

5. The comments also make clear that there is no justification for the LECs to continue levying the PICC on an IXC when that IXC no longer has any business relationship with the

⁸ Excel at 9-10 (noting that customers blame the IXC for the resulting confusion); Cable & Wireless at 1-5 (creation of PICCs has forced the IXCs to become a "costly, and inefficient, collection agency for the [LECs]"); WorldCom at 9-11; Sprint at 2; CompTel at 4-5; RCN at 7-9; TRA at 9-10; Frontier at 4-5. See also GTE at 10-13 (advocating the elimination of PICCs altogether); Sprint at 2-3 (same).

⁹ See BellSouth at 17-18; U S WEST at 8; Ameritech at 18; Bell Atlantic at 9.

¹⁰ See WorldCom at 9-11 & n.15 (noting that upgrading the CARE system should not be limited to prospective use only); Cable & Wireless at 5; Sprint at 5-6.

customer.¹¹ The LECs' current practice (which they continue to defend) simply invites exactly the sort of abuse the Commission sought to avoid in the Access Reform Order (¶¶ 91-92). Where an IXC has terminated its relationship with an end-user, the end-user should be treated the same as any other customer who has not presubscribed to any carrier, in which case the LEC is authorized to recover the PICC directly from the customer. Even GTE recognizes (at 13) that the LECs' principal objection -- that they would be improperly placed "between the IXC and its customers"¹² -- is meritless as long as the IXC properly notifies the LEC of the PIC termination.

6. Finally, a number of commenters agree that the Commission should require the LECs to specify the extent to which they are passing their USF assessments through to IXCs.¹³ The LECs offer no justification for their current practice of invisibly blending those assessments into existing charges, other than the fact that the Commission's rules presently do not require more.¹⁴ A specific listing of those disaggregated amounts would allow the Commission to verify that the LECs are not passing through more than they are

¹¹ WorldCom at 12-13; CompTel at 7; Cable & Wireless at 7; RCN at 9; TRA at 10; Excel at 12; GTE at 13; Frontier at 6-7.

¹² SBC at 6-7; USTA at 16; BellSouth at 27; Bell Atlantic at 8.

¹³ WorldCom at 13; Excel at 6-8; RCN at 5-6; TRA at 10-11.

¹⁴ USTA at 17; BellSouth at 29-32; U S WEST at 6-7; GTE at 15-16; Ameritech at 19-20; Bell Atlantic at 12.

allowed. As AT&T has long advocated, this would be best accomplished by creating a separate rate element in the Common Line basket.¹⁵


CONCLUSION

For the reasons stated above and in AT&T's Comments, the Commission should: (i) prescribe cost-based interstate access rates; (ii) revisit and possibly eliminate the distinction between primary and non-primary lines; (iii) find that an IXC can de-PIC a customer so that it will not be liable for payment of the PICC if it has discontinued service to the customer and has timely notified the LEC; and (iv) require each LEC to identify the amount of its universal service support obligations flowed through to IXCs in access charges.

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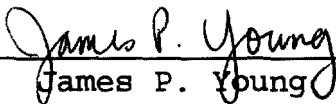
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March 30, 1998

¹⁵ See AT&T Opposition to Petitions for Reconsideration, filed August 18, 1997, in Access Charge Reform, CC Docket No. 96-262, at 17-18.

CERTIFICATE OF SERVICE

I, James P. Young, do hereby certify that on this 30th day of March, 1998, a copy of the foregoing AT&T Reply Comments on MCI Emergency Petition for Prescription was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.


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